IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1077 OF 2004

Mrs. Suman Ramesh Sawant ... Appellant (Ori.Defendant)

V/s

Mr. Arun Ramkrishna Patil ... Respondent (Ori.Plaintiff)

Ms. Preetam Tendulkar holding for Mr. M.S. Karnik for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 28TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Kalyan dated 8.3.2004 dismissing the appeal and confirming the order passed by the Joint Civil Judge, Jr.Divn., Kalyan dated 25.1.2002 partly decreing the suit and issuing declaration against the defendant to the effect that the plaintiff is the owner of sintex water tank fitted on the terrace and has right to fetch water from the said water tank on the terrace. It was further observed that defendant had no right to remove the said tank without following due process of law. It was further directed to the defendant to hand over the

key of the door of the terrace as and when required for maintenance of sintex water tank on the terrace, to the plaintiff.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The dispute between the parties appears to be that the plaintiff - the tenant, has kept the sintex water tank on the terrace of the building belonging to the defendant under the express agreement between the parties and since there was some dispute between the parties, the defendant obstructed the plaintiff from using the terrace for keeping the sintex water tank and using the water therefrom. Hence the suit was filed for declaration and injunction.

4. The learned Trial Judge came to the conclusion that, on the basis of the agreement it was established that the plaintiff had proved that he was the owner of the water tank fitted on the terrce and had right to fetch water therefrom. The defendant was also restrained from removing the said water tank without following due process of law and was directed to hand over the key of the door of the terrace as and when required for

maintenance of the water tank.

The appeal was carried to the District Court. The Addl. District Judge, Kalyan, adjudicated the dispute on merits and after hearing both parties confirmed the findings and order recorded by the lower Court and dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The only grievance appears to be regarding direction to the defendants to hand over the key of the door of the terrace to the plaintiff for maintenance of sintex water tank fitted on the terrace. The learned counsel for the appellant has taken strong exception to this aspect on the ground that handing over key to the plaintiff tenant would amount to allowing utilization of the terrace especially when defendant initiated to make further construction on the terrace. However, both the Courts below have held that there is no evidence on record to show that defendants initiated to make any construction on the terrace and, therefore, required the plaintiff to remove the tank. In view of this position, no interference is required to be made in the findings recorded by both the Courts below which are issues of

fact and no substantial question of law is involved. However, it is clarified that the defendant is directed to hand over the key of the door of the terrace to the plaintiff only when required for maintenance of the water tank on terrace and, therefore, defendant's apprehension that the terrace would be utilized by the appellant - plaintiff for any other purpose appears to be misplaced. It was also sought to be argued that there was no cause of action to the suit, however, it is revealed from the record that notice was issued by the defendant to the plaintiff for removal of the tank. In my view, the factum of notice and contents thereof are sufficient to create any apprehension in the mind of the plaintiff which would give cause of action to file the suit. Be that as it may, the fact remains that there is no substance in the appeal and, therefore, the appeal deserves to be dismissed and stands dismissed with no order as to costs.

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